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Before the
Federal Communications Commission
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of

Implementation of the
Telecommunications Act of 1996:

Telecommunications Carriers' Use of
Customer Proprietary Network
Information and Other Customer
Information

CC Docket No. 96-115

GTE Reply Comments

GTE Service Corporation and its affiliated domestic telecommunications,¹
wireless,² and long distance³ companies (collectively "GTE"), hereby reply to comments
on the *Second Report and Order*⁴ in this proceeding filed in response to the

¹ GTE Alaska Incorporated, GTE Arkansas Incorporated, GTE California Incorporated, GTE Florida Incorporated, GTE Hawaiian Telephone Company Incorporated, The Micronesian Telecommunications Corporation, GTE Midwest Incorporated, GTE North Incorporated, GTE Northwest Incorporated, GTE South Incorporated, GTE Southwest Incorporated, Contel of Minnesota, Inc., Contel of the South, Inc. and GTE Communications Corporation.

² GTE Wireless Incorporated and GTE Airfone Incorporated.

³ GTE Communications Corporation, Long Distance division.

⁴ Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, Second Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-115 (rel. Feb. 26, 1998), 63 Fed. Reg. 20326 (Continued...)

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Commission's May 1, 1998, Public Notice regarding GTE's Petition for Temporary Forbearance or, in the Alternative, Motion for Stay (the "GTE Petition") and the Request for Deferral and Clarification of the Cellular Telecommunications Industry Association (the "CTIA Request"). GTE notes that the parties (with a single, unsurprising, exception) strongly and universally support the relief requested by GTE and CTIA and no party challenges the Commission's authority to grant a temporary forbearance, a stay, or a deferral of the rules' effective date as the circumstances may warrant. There is also broad support to extend relief to all carriers.⁵

I. Introduction

GTE agrees with the Commission's approach of focusing on customer perceptions and expectations as the key to interpreting the CPNI provisions in section 222. Based on the record that has developed in connection with the GTE Petition and CTIA Request, GTE submits that in several important areas the Commission's proposed rules and interpretations of the Act are inconsistent with the customer's viewpoint and, indeed, could disrupt customers' ability to obtain the services they need.

(...Continued)
(April 24, 1998).

⁵ See BellSouth Comments at 5; MCI Comments at 3; SBC Comments at 2; USTA Comments at 4-5; U S West Comments at 2-3, 8-11..

Accordingly, the record abundantly supports interlocutory relief from the following requirements:

- The prohibition on use of CPNI to market CPE used for CMRS;
- The prohibition on use of CPNI to market voice mail, store-and-forward, and short message services, which are used integrally with telephone service and CMRS;
- Restrictions on the use of CPNI to market enhancements to packages of telecommunications services;
- The anti-win-back rule; and
- Restrictions on the use of CPNI to market CPE that is necessary to enable the introduction of advanced services.

II. CPE for CMRS

Every party who addressed this issue agreed that the Commission needs to develop a more complete record on the use of CPNI to market CPE (e.g., handsets) that is integral to the provision of CMRS, and should not restrict use of CPNI pending consideration of that record. Customers consider CPE as part of the total service relationship when they purchase CMRS.⁶ Many parties described the virtual necessity of marketing CPE with CMRS in light of these customer perceptions.⁷ In addition, the record shows that the only effective way to migrate high-volume analog cellular customers to digital service is to use CPNI and that carriers must be able to offer a digital handset as a part of the package offered to customers. As AT&T notes “[t]o

⁶ See, e.g., BellSouth Comments at 6; NTCA Comments at 3; Omnipoint Comments at 2; PrimeCo Comments at 6; SBC Comments at 4; U S West Comments at 7.

⁷ E.g., NTCA Comments at 3; SBC Comments at 6-7.

obtain digital service from a particular carrier, the customer not only needs a digital (rather than analog) handset, but also must have the correct type of digital handset because different digital technologies have been adopted by different cellular carriers.”⁸ There can be no doubt that customer confusion and disruption would result from restricting use of CPNI to market CPE packaged with CMRS service.

III. Voice mail, store-and-forward, and short message services

Customers also consider certain services that are correctly classified as information services to be essential to the transmission and completion of telecommunications. Voice mail, store-and-forward, and short message services each enable customers to receive calls or messages that they would otherwise miss due to a variety of factors such as unfavorable radio reception conditions, busy lines, etc. All of the parties who took a position on these services urged the Commission to take a closer look at their critical role in communications services, and to postpone any restriction on using CPNI to market these services.⁹ BellSouth, for example, explains that “CMRS services (including voice messaging) ... are inseverably intertwined in customer’s perceptions.”¹⁰ Primeco states that “voice mail and other information services are viewed as critical by many consumers for their mobility needs.”¹¹ These

⁸ AT&T Comments at 5. See also SBC Comments at 3, 5-7; BAM Comments at 6; BellSouth Comments at 6-7; NTCA Comments at 3.

⁹ E.g., 360° Comments at 3-4; AirTouch Comments at 4; AT&T Comments at 6; BAM Comments at 6; BellSouth Comments at 7-10; PrimeCo Comments at 3-4; SBC Comments at 7-9; USCC Comments at 3-4; U S West Comments at 7.

¹⁰ BellSouth Comments at 6.

¹¹ Primeco Comments at 3-4.

message completion services are critical for wireline customers, as well. BellSouth shows that “[f]rom a customer’s perspective, voice messaging service is simply another tool available to the customer to manage use of his or her telephone service.”¹² As SBC puts it, “[v]oice mail services serve an increasingly indispensable ‘call control’ function in today’s often hurried business and family environments.”¹³ Customer frustration will result if carriers cannot include these services in packages that are marketed with the assistance of CPNI.

IV. Enhanced Packages

The Commission’s “total service approach” breaks down if it is strictly applied to three service categories differentiated on the basis of technology (wireline vs. wireless) or distance (local vs. long distance). While these distinctions have historically divided the telecommunications marketplace and its providers, customers will increasingly purchase packages of services that may contain elements from any or all of the three categories. U S West agrees that the Commission’s 3-bucket approach “has the potential to be particularly pernicious with respect to packaged offerings”¹⁴ because customers will expect and desire *package providers* to offer package enhancements regardless of their CPNI “bucket” classification. Ameritech quite correctly states that this restriction, along with others, would “result in a practical deprivation of customers’ ability to be informed about products and services naturally associated with those for

¹² BellSouth at 8.

¹³ SBC Comments at 10.

¹⁴ U S West Comments at 12.

which they already have an established relationship with their carriers.”¹⁵ As noted in GTE’s Petition, the Commission has already recognized that service distinctions (*i.e.*, “bucket” classifications) have no place where customers subscribe to integrated packages.¹⁶

MCI is the sole commenter to object to GTE’s focus on customer expectations rather than service distinctions.¹⁷ MCI misleadingly claims that allowing CPNI derived from packaged offerings to market enhancements would “gut” section 222(c)(1).¹⁸ However, nothing in that section prohibits the use of CPNI derived from a service package to enhance the package. The language of the section allows the a package to be regarded as a “service.” The test of whether an offering is a service is the Commission’s “total service approach” based on customer perceptions and expectations. Customers may well, as the Commission believes, regard local, long distance, and CMRS as separate services when they are purchased individually, perhaps from different companies or under different trade names or with separate pricing plans and billing. Under these circumstances, section 222(c)(1) would not be “guttled” but would apply as the Commission has specified to each separate bucket.

¹⁵ Ameritech Comments at 2.

¹⁶ GTE Petition at 24, *quoting Second Report and Order* ¶ 24 & n.99.

¹⁷ Indeed, MCI is the only party to oppose any of the relief GTE requested. It is noteworthy that AT&T, the party most similarly situated to MCI in the market, expressly stated that “AT&T has no objection to the broader interim relief requested by GTE.” AT&T Comments at 2 n.2.

¹⁸ MCI Comments at 9-12.

From the customer's perspective, the situation is quite different for service packages. Use of CPNI to expand service packages would not "gut" section 222(c)(1). With separate offerings, the customer's perception is that he or she is buying two different services. In the case of a package, the customer perceives a single service, probably marketed under a single brand name, priced as a package, and not available from the provider as separate services.

Rather than being anticompetitive as MCI suggests, the use of CPNI is pro-competitive because selling and expanding packages is the most effective strategy for entry into new markets by a CLEC. For example, it is common knowledge that MCI itself is promoting packages of services as part of its own effort to compete more broadly, including entry into local exchange markets.

V. Win-back

The record is clear that "win-back" marketing benefits customers through competition. In AT&T's words, "use of CPNI for winback marketing is the hallmark of competition."¹⁹ Moreover, such a use of CPNI is well within customer expectations, based on the past business relationship and the customer's interest in being informed of attractive offers. This is a case where the customer's interests may conflict with those of the "winning" carrier. The new carrier would not want the customer to go back to the former carrier for a better deal, but the better deal certainly benefits the customer. The public interest requires the Commission to act in behalf of the customer in this instance. Again, MCI is the only nay-sayer. MCI apparently does not oppose its own

¹⁹ AT&T Comments at 7.

use of CPNI for win-back marketing; it asks the Commission to handicap only incumbent LECs. MCI's reasoning is specious. MCI confuses a carrier's own CPNI, derived from its provision of service to its former customer, with the CPNI of the new carrier. Section 222(b) fully protects the new carrier from having its proprietary information used by the former carrier for marketing purposes.

Moreover MCI's argument that the anti-win-back rule be applied only to ILECs is contrary to the statute and the Commission's interpretation of it, which requires all carriers to be treated equally.²⁰

VI. CPE for advanced services

Many parties agree that temporarily allowing CPNI to be used to market advanced services such as ADSL is in the public interest. Several carriers also request that forbearance or a stay is needed for other CPE that is integral to a telecommunications service, such as Caller ID displays and Call Waiting telephone units.²¹ GTE believes these requests are reasonable as well.

MCI is the sole challenger to this relief.²² MCI erroneously attempts to characterize ADSL as a monopoly service. To the contrary, ADSL is a new and

²⁰ *Second Report and Order* ¶¶ 49-50.

²¹ U S West Comments at 10; Bell Atlantic Comments at 2n4; BellSouth Comments at 7-9; SBC Comments at 13-20.; USTA Comments at 6.

²² Although Vanguard does not take a position on the merits, it suggests that there is no need for immediate action on use of CPNI to market ADSL . This is true (as far as it goes) but irrelevant because ADSL (an interstate access service) is in the local bucket for CPNI purposes. The issue is with ADSL *modems*. As set forth in GTE's Petition, the problem is the limitation of section 222(c)(1)(A) implied consent to telecommunications services, thereby excluding implied consent for advance services' CPE such as ADSL modems. Vanguard simply sidesteps this problem. Vanguard
(Continued...)

advanced service offering, where no carrier has dominance. Indeed, ADSL is envisioned as a competitive alternative to cable Internet access services. Cable companies are allowed to use their CPNI to market both the transmission service and the cable modem.²³ GTE merely seeks parity of treatment.

Temporary relief to use CPE to market ADSL modems is not anticompetitive, as MCI claims. GTE is already free to use CPNI to market ADSL service, and it may also sell ADSL modems along with ADSL service. Being able to use CPNI to sell ADSL with an appropriate modem does not give GTE a monopoly in either ADSL or in modems. It merely permits GTE to act in accordance with customer expectations. GTE's long-run interest will be served by the development of a competitive modem market, which will make ADSL service more affordable by a larger customer base. However, in the near term, as the service is being introduced, GTE needs the ability to ensure that customers can obtain the needed CPE.

(...Continued)
Comments at 2 n.2.

²³ See Section 631 of the Act, 47 U.S.C. § 551.

VII. Conclusion

The Commission has before it a complete and convincing record to forbear temporarily from, or stay application of, the CPNI restrictions discussed above.

Respectfully submitted,

GTE SERVICE CORPORATION, AND ITS
AFFILIATED DOMESTIC TELECOMMUNICATIONS ,
WIRELESS, AND LONG DISTANCE COMPANIES

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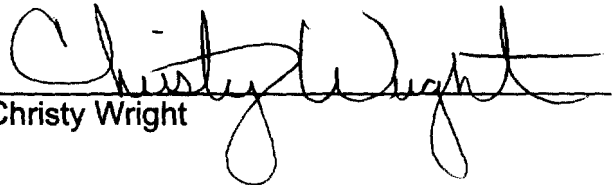
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